

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID J. SCOTT,

Plaintiff,

v.

DALE FELDPAUSCH, *et al.*,

Defendants.

Case No. 1:03-CV-448

Hon. Richard Alan Enslen

ORDER

Plaintiff David J. Scott has filed a Motion to Amend Judgment, concerning the Opinion and Judgment of March 21, 2005 which dismissed with prejudice Plaintiff's remaining First Amendment retaliation claims against Defendant Dale Feldpausch. Plaintiff asserts that this Motion was handed to prison officials within ten days (Mot. at ¶ 8), and, therefore, is timely under Federal Rule of Civil Procedure 59(b).

A Rule 59 motion may be granted only for one of three reasons: (1) to correct a clear error of law; (2) to account for newly discovered evidence or an intervening change in the controlling law; or (3) to otherwise prevent manifest injustice. *GenCorp, Inc. v. American Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999). In this case, the reason asserted is Plaintiff's Supplemental Declaration which purports to establish that Plaintiff was transferred from the Carson Correctional Facility in December 1995 and returned to the Facility in June 2000. (David Scott Supplemental Decl. at ¶¶ 2 & 5.) This Declaration does not constitute newly discovered evidence since it was known to Plaintiff since June 2000. Further, the Rule 59 motion does not otherwise operate to "prevent manifest injustice." Even if the Supplemental Declaration is considered in the context of

the underlying summary judgment record, the evidence on this record is legally insufficient to prove a causal connection between protected conduct and adverse action—that is, it does not establish that Defendant Feldpausch took action to cause another Defendant (Defendant Brown) to file a later withdrawn major misconduct charge against Plaintiff because of Plaintiff's protected conduct in 1995 (grievances filed against Feldpausch in 1995 concerning Plaintiff's access to property in footlockers).

THEREFORE, IT IS HEREBY ORDERED that Plaintiff David J. Scott's Motion to Amend Judgment (Dkt. No. 93) is **DENIED**.

DATED in Kalamazoo, MI:
May 17, 2005

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
UNITED STATES DISTRICT JUDGE